

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
Streamlined Contributor Reporting	)	
Requirements Associated with	)	
Administration of Telecommunications	)	
Relay Service, North American Numbering	)	
Plan, Local Number Portability, and	)	
Universal Service Support Mechanisms	)	
	)	
Telecommunications Services for	)	CC Docket No. 90-571
Individuals with Hearing and Speech	)	
Disabilities, and the Americans with	)	
Disabilities Act of 1990	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery	)	
Contribution Factor and Fund Size	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

**AT&T REPLY ON USF PETITION FOR WAIVER**

Pursuant to the Commission’s Public Notice, DA 04-241, released January 30, 2004, AT&T Corp. (“AT&T”) submits this reply in response to the comments filed by SBC, Verizon and Verizon Wireless on AT&T’s request to waive those provisions of the Commission’s Universal Service Fund (“USF”) rules that require adjustments to first quarter

2003 revenue projections to be submitted no later than March 20, 2003, so as to eliminate the effect of first quarter 2003 projections errors in the annual true-up process.<sup>1</sup> Based on this waiver, AT&T would submit a revision to line 120 of the February 1, 2003 Form 499-Q that substitutes its *actual* collected interstate and international end user telecommunications revenues for the first quarter 2003.

Although the “purpose of the annual true-up is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanism based on quarterly revenue data,”<sup>2</sup> the Commission’s procedure set forth in the March 14, 2003 *Reconsideration Order*<sup>3</sup> fails to true up a carrier’s 2003 revenues to *actual* collected amounts. Instead by netting out the *projected* amount for the first quarter, the true-up payments for the second through fourth quarters are increased by the amount of the underforecasting error in the first quarter. As a result, a carrier such as AT&T that underprojected its first quarter revenues will pay more than the “appropriate amount” because the effect of netting out an understated first quarter 2003 projection amount is to artificially and erroneously inflate AT&T’s USF contributions by millions of dollars (collected interstate and international revenues) for the second through fourth quarters 2003. Moreover, AT&T *never* collected on this erroneous true-up amount, as the contribution factor for the first quarter of 2003 was *not* based on projected revenues.

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, ¶ 36, rel. December 13, 2002 (“Interim USF Order” and “USF Contribution SFNPRM”).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 *et al.*, Order and Second Order on Reconsideration, FCC 03-58, ¶ 15, rel. March 14, 2003 (“Reconsideration Order”).

<sup>3</sup> *Id.* ¶ 17.

SBC, Verizon and Verizon Wireless *all* recognize that the existing process is flawed because it fails to true-up projected revenues to actual revenues. SBC expressly supports grant of a waiver to AT&T for “the reasons articulated in AT&T’s petition.” SBC Comments at 1. Verizon notes that “AT&T’s petition has identified a significant flaw in the true-up process for 2003.” Verizon Comments at 1. Finding that they had similarly underforecasted their first quarter 2003 revenues, SBC and Verizon each filed their own waiver petitions on February 27, 2004 that, identical to AT&T’s waiver petition, ask the Commission to allow them to file a revision to their first quarter 2003 revenues, so that actual revenues achieved for that quarter would be used by USAC in determining the carrier’s “actual” revenues for the second through fourth quarters of 2003. AT&T supports grant of SBC’s and Verizon’s waiver petitions.

Verizon Wireless, on the other hand, has not filed its own waiver request and argues that “the Commission should clarify the true-up process to exempt all carriers’ first quarter revenues from the the true-up calculation, because the first quarter 2003 revenues were not used in any manner to calculate carrier contributions to the Universal Service Fund.”

Verizon Wireless at 1. Verizon Wireless’s suggestion would likely require a rulemaking and there is insufficient time for the Commission to complete that process prior to submission of the FCC Forms 499-A on April 1, 2004 and commencement of the true-up process.

Accordingly, the Commission should grant waivers only to those carriers that have sought them. There is nothing inequitable about this process, as each filing carrier has shown good

cause for the waiver. The rights of these carriers should *not* be adversely impacted simply because other carriers have elected not to seek corrective action.<sup>4</sup>

In sum, grant of the waiver AT&T has requested is appropriate to avoid the harsh, inequitable impact of the rule.<sup>5</sup> In effect, by replacing the line 120 projected collected revenues in AT&T's February 1, 2003 Form 499Q with actual revenues, USAC will be able to true-up AT&T's second through fourth quarter projections free of any first quarter errors, as was intended by the Commission's *Reconsideration Order*.<sup>6</sup>

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<sup>4</sup> Verizon Wireless also suggests that AT&T's position in response to the *USF Contribution SFNPRM* that the Commission should adopt a numbers- and connections-based USF assessment and recovery mechanism because of diminishing interstate and international telecommunications revenues is undercut by the fact that AT&T had underforecasted its own first quarter 2003 revenues. Verizon Wireless at 3-4. Not only is this contention outside the scope of the instant waiver proceeding, suffice it to say that had the Commission not applied \$200 million from the schools and libraries component of the USF program, the contribution factor for the second quarter of 2004 would have risen to 9.9% from its current 8.7% level. See Public Notice, *Proposed Second Quarter 2004 Universal Service Contribution Factor*, CC Docket No. 96-45, DA 04-621, rel. March 5, 2004, at 2 & n.7; see also Universal Service Administrative Company, *Supplemental Submission Regarding Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2004*, March 3, 2004, at 2. Because ever-increasing USF contribution factors will ultimately diminish public support for the USF programs, a change in the contribution mechanism is essential.

<sup>5</sup> See *Ex Parte* Letter from Amy L. Alvarez, AT&T to Marlene H. Dortch, FCC, CC Docket Nos. 96-45 *et al.*, December 16, 2003.

<sup>6</sup> In accordance with the Commission's decision in the *Interim USF Order* (§ 35), to adopt a circularity discount factor, USAC should, of course, make a circularity adjustment in assessing true-up payments to ensure that carriers are *not* required to make additional USF contributions on the revenues derived from the USF surcharge collected from end-user customers.

Accordingly, AT&T requests that the Commission grant it the limited waiver requested in its January 27, 2004 waiver petition and allow USAC to net out AT&T's *actual* first quarter 2003 revenues from its calendar year 2003 revenues to determine its actual revenues for the second through fourth quarters of 2003.

Respectfully submitted,

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March 10, 2004

## **CERTIFICATE OF SERVICE**

I, Judy Sello, do hereby certify that on this 10th day of March, 2004, a copy of the foregoing "AT&T Reply on USF Petition for Waiver" was served by U.S. first class mail, postage prepaid, on the parties named below.

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